UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re:	)	CHAPTER 7
	)	
HUNTER W. SMITH,	)	
	)	
Debtor.	)	CASE NO. 99-32902
THE CADLE COMPANY and D.A.N. JOINT VENTURE, a Limited Partnership,	)	
	)	
Plaintiffs	)	ADV. PRO. NO. 00-3049
v.	)	
	)	
HUNTER W. SMITH,	)	Re DOC. I.D. NO. 99
	)	
Defendant.	)	

MEMORANDUM ORDER ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

In this adversary proceeding, The Cadle Company and D.A.N. Joint Venture, a Limited Partnership (hereafter, collectively, the "Plaintiff") seek to have the entry of the Debtor's discharge denied.[1] The Plaintiff's six "count" Complaint Objecting to Discharge, Doc. I.D. No. 1, was filed on March 1, 2000. On June 19, 2003, the Plaintiff filed its Motion for Summary Judgment (hereafter, the "Motion"), Doc. I.D. No. 99, seeking summary judgment on the basis of Bankruptcy Code Section 727(a)(2)(A) (Complaint ¶ 4). For the reasons which follow, the Motion must be denied.

Federal Rule of Civil Procedure 56(c), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056, directs that summary judgment shall enter when "the

[1] The United States District Court for the District of Connecticut has jurisdiction over the instant proceeding by virtue of 28 U.S.C. § 1334(b); and this Court derives its authority to hear and determine this matter on reference from the District Court pursuant to 28 U.S.C. §§ 157(a), (b)(1). This is a "core proceeding" pursuant to 28 U.S.C. §§ 157(b)(2)(J).

pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." When ruling on motions for summary judgment "the judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). The moving party has the burden of showing that there are no material facts in dispute, and all reasonable inferences are to be drawn, and all ambiguities resolved, in favor of the non-moving party. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970).

Rule 56(a) of the Local Civil Rules of the United States District Court for the District of Connecticut (heretofore and hereafter, "Local Rule(s)")[2] supplements Fed. R. Civ. P. 56(c) by requiring detailed statements of material fact from each party to a summary judgment motion. In the instant matter, both parties have provided the requisite statements, significantly aiding the Court in determining the nature and extent of their dispute.

The relief of a bankruptcy discharge is not an absolute right, but rather, a privilege accorded only to debtors who conduct their financial affairs with honesty and openness. Despite this limitation on the discharge right, the law carries a "presumption" in favor of the debtor in discharge contests. This debtor-inclination derives from the observation that the denial of a discharge "imposes an extreme penalty for wrongdoing". In re Chalasani, 92 F.3d 1300, 1310 (2d Cir. 1996). Thus, Bankruptcy Code Section 727 "must be construed

[2] The Local Rules are made applicable to this matter by Rule 1001-1(b) of the Local Rules of Bankruptcy Procedure of the District of Connecticut.

. . . 'liberally in favor of the bankrupt'". Id. In addition, the party objecting to the granting of a discharge bears the ultimate burden of persuasion at trial. Fed. R. Bankr. P. 4005. In the instant summary judgment matter, these "presumptions" are only strengthened by the directive that all reasonable inferences are to be drawn, and all ambiguities resolved in favor of the non-moving party. See Adickes, supra at 157.

Thus, given the extraordinary nature of discharge objection proceedings, it is appropriate to apply strict scrutiny to motions for summary judgment filed by plaintiffs in such proceedings. Rare indeed will be the instance where the Court can adjudge with confidence, on a "paper" record alone, that a debtor engaged in discharge-disqualifying conduct with the statutorily-required level of scienter and intention. Pivotal factual issues involved in discharge proceedings often turn on the credibility of witnesses; and an essential tool in the Court's assessment of credibility is its observation of the demeanor of such witnesses. Such observation is, of course, impossible in the context of a summary judgment matter.

The foregoing tenets apply with full force to the Court's consideration of the instant Motion. While the Plaintiff's case appears formidable *on paper*, innocent explanations for the conduct presented are not entirely beyond the realm of reason. If *bona fide* explanations do exist, they cannot be established without the Debtor's presentation of *credible* testimonial evidence. And given the law's strong presumption in debtors' favor in summary judgment matters within discharge proceedings, the Debtor-Defendant here should be afforded an opportunity to present putatively exonerating testimony in person before this Court.

For the foregoing reasons there remain genuine issues for trial in this adversary proceeding. The Plaintiff's Motion is **DENIED**.

BY THE COURT

DATED: April 20, 2004

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Albert S. Dabrowski
Chief United States Bankruptcy Judge